

48A C.J.S. Judges § 242

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

B. Waiver of Disqualification

2. Acts Constituting Waiver

§ 242. Participation in proceedings—Preliminary proceedings

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  52, 53

Waiver may generally ensue from participation in preliminary proceedings.

Waiver may generally ensue from participation in preliminary proceedings.¹ However, not every preliminary ruling is a ruling on the merits of the cause waiving an objection to the qualification of the judge.² For instance, a party does not waive the right to a change of judge by reason of the prior entry by the judge of an order not concerned with the merits of the action and which does not involve the consideration of evidence or of affidavits.³ Further, a party does not waive the right to the peremptory disqualification of a judge assigned to a case by accepting that judge's authority to sign ex parte orders in the same case before being assigned to it.⁴ Likewise, participation in a bail hearing before a judge does not constitute a waiver of the right to make a peremptory challenge of that judge.⁵

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Footnotes

¹ Wis.—*State ex rel. Carkel, Inc. v. Circuit Court For Lincoln County*, 141 Wis. 2d 257, 414 N.W.2d 640 (1987).

² Ariz.—*Guberman v. Chatwin*, 19 Ariz. App. 590, 509 P.2d 721 (Div. 1 1973).

As to "merits of the action" standard, see § 240.

- 3 Ariz.—*Gant v. Helm*, 25 Ariz. App. 583, 545 P.2d 431 (Div. 2 1976).
- 4 Ariz.—*Murray v. Thomas*, 80 Ariz. 378, 298 P.2d 795 (1956).
Wyo.—*Pawlowski v. Pawlowski*, 925 P.2d 240 (Wyo. 1996).
- 5 Alaska—*Gardner v. State*, 702 P.2d 250 (Alaska Ct. App. 1985) (disapproved of on other grounds by, *DeNardo v. Municipality of Anchorage*, 938 P.2d 1099 (Alaska Ct. App. 1997)).

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